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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,229	02/11/2002	George R. Royer		2290

7590

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George R. Royer  
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EXAMINER
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LEWIS, KIM M

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 07/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/072,229

Applicant(s)

ROYER, GEORGE R.

Examiner

Kim M. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Detailed Action.

## **DETAILED ACTION**

### ***Response to Amendment***

The amendment filed on 4/7/04 has been received and made of record in the application file wrapper. As requested claims 1-4 have been amended and claims 5 and 6 have been added.

### ***Drawings***

The drawings were received on 4/7/04. These drawings are approved by the examiner.

### ***Claim Suggestions***

Claims 1, 2 and 4 are objected to because of the following informalities:

Claim 1, line 7, delete the second occurrence of "on";

Claim 1, line 11, after "portion" insert --, the upper surface portion--;

Claim 2, line 10, after "portion" insert --, the upper surface portion--; and

Claim 4, should be properly amended so as to avoid confusion (*i.e.*, the claim has an underlined termed between a bracketed phrase).

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any

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person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 2 and 4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. More specifically, applicant claims "protruding means" and "downwardly depending on retention means", which is new matter.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,124,520 ("Roberts").

As regards claim 1, Roberts anticipates applicant's invention as presently claimed. More specifically, Roberts discloses a bandage having an upper surface and a lower surface, such bandage having means to aid in the application and retention of medication on a specific area of a person's skin comprising: a bandage member (12) having an upper face and a lower face, and

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said bandage member having an opening (18) extending from said upper face to and through the lower face; adhesive means (col. 2, lines 38-42) coated on part of said lower face of the bandage member in order to adhere the bandage member to the skin of the individual; and protruding means (26) having an upper surface portion and a lower surface portion (30), said upper surface portion affixed to said lower face of said bandage member, said protruding means extending away from said lower face, with said lower surface portion on said protruding means adapted to embrace in a flush manner against a portion of the person's skin, said protruding means affixed to said lower face of said bandage member adjacent said opening in said bandage member (Figs. 1 and 2).

As regards claim 2, note the rejection of claim 1 above. Also, the opening is **capable** of receiving medication since nothing in Roberts precludes the use of medication in the opening.

As regards claims 3 and 6, note the rejection of claim 1 above, which points out Roberts' bandage member, adhesive means and the projection means (outwardly extending protective perimeter means). The applicant should note that because the bandage member of Roberts has some thickness thereto, the opening defines a spatial channel, which has an upper opening and a lower opening.

As regards claim 4, note the rejection of claim 1 above, which points out Roberts' bandage member. Regarding the downwardly depending on retention means recited in (c), as best understood by the examiner, the retention means reads on member (26) of Roberts.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,641,643 ("Greer").

As regards claim 5, Greer anticipates the invention as presently claimed. More specifically, Greer discloses a bandage member to be adhered to skin of an individual, comprising: (a) a bandage member (30) having an upper face and a lower face and wherein said bandage member has a first end and a second end, and further wherein said bandage member has a first lateral side and a second lateral side and wherein said bandage member has an opening (36) with an upper opening and a lower face opening on said lower face extending completely through said bandage from upper face to said lower face (Fig. 2); (b) a

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retractable flap member (38) affixed over the upper opening of said opening in said bandage; and (c) rectangular extension means affixed to the lower face of said bandage member said rectangular means extending away from said lower face and having a lower surface portion to rest against the person's skin with said rectangular means surrounding the lower opening portion of said opening in said bandage member.

The applicant should note that because the bandage member of Greer has some thickness thereto, the opening defines an opening, which has an upper opening and a lower opening.

The applicant should also note that it has been held that a change in shape of a prior art device is a design consideration within the skill of the art. *In re Rose*, 220 F.2d 450, 105 USPQ 237 (CCPA 1955).

As such, it would have been an obvious design choice to one having ordinary skill in the art to modify Greer to by making member (12) circumferential in order to fit circular wounds.

### ***Response to Arguments***

Applicant's arguments filed 4/7/04 have been fully considered but they are not persuasive. More specifically, applicant's amendment neither defines over the newly cited prior art patent of Roberts nor Greer, previously recited. Applicant's attention is directed to the rejections above, which show how the examiner interprets applicant's claims, as well as the Roberts and Greer patents.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

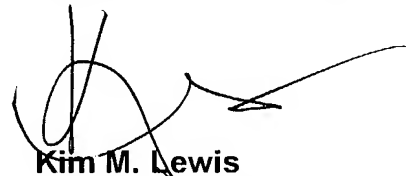
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is 703.308.1191. The examiner can normally be reached on Mondays to Thursdays from 5:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 703.308.0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Kim M. Lewis**  
**Primary Examiner**  
**Art Unit 3743**

kml  
July 4, 2004